THE PARSONS GUIDE: OR THE LAW OF TYTHES.

Wherein is ſhewed,

Who muſt pay Tythes, and to whom, and of what things, When, and How they muſt be paid, and how they may be recovered at this day, and how a man may be diſcharged of payment thereof.

The Second Edition much inlarged throughout the whole Book.

By *W. Sheppard*, Eſq;

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TO THE

READER,

I *Having formerly made this* Treatise of Tythes *for my own private use, it came into my thoughts how much strife there was every where about Tythes and Duties, wherein the Parson or Vicar as well*

by the preſent, as the Ancient Laws *of this Kingdome hath as good right and property as any man hath to the other remaining parts of the profits of his Eſtate; and being ſatisfied that* Tythes *are not* Antichriſtian, *as hath been by ſome late Pamplets aſſerted, but were due and payable when* Romes Religion *was a ſtranger to the* Ancient

Saxon

Saxon Church, *which does in all things agree with us now; and which did allow of tythes and other duties to the Holy Church: and that appeares by ſeveral of the* Ancient Records *of this Kingdome, as firſt the Law of* Offa King of the Eaſt Angles *about the year* 793. *by which he gave to the Church the* Tythes *of all his ſubſtance:*

then the moſt excellent and free donation of Æthelwolph *at* Winchester *in the preſence of the Kings of* Mercia and the Eaſt Angles, *all his Nobles and Biſhops conſenting thereto, he was Heire and Succeſſor to that* Egbert King of the weſt Saxons, *that converted the Heptarchy into a Monarchy, the ſeven Kingdomes into one;*

and

and having gotten all the Lands of England into his poſſeſſion, he conferred the Tythes *of all upon the Church. And this ſo famous a Record is not mentioned by one but divers Hiſtorians, as* Sir Henry Spelman *obſerveth in his Annotations upon the place; 'tis remembred by ancient* Aſſer *alſo, that wrote the life of* King Alfred; Alu-

red *and* Guthurn *Kings of the* Saxons *and* Danes, *in that mutual league of both nations provided about* 876. *If a* Dane *pay not his Tythe let him be punished as a transgressor by the law, and the* English *must be fined: King* Æthelston *obliged himselfe and all his Nobles and Bishops to pay the* Tythes *of Cattel and of the fruits*

of

of the Earth: King Edmond *with his Nobles and Eccleſiaſtiques about* 946. *Pronounced a Curſe upon every Chriſtian that did not religiouſly pay his* Tythes. *Then the laws of* Edgar *about the yeare* 967. *that of* Ethelred *in the year* 1009. *and of* Canutus 1032. *by all which it may plainly appear how ancient the Laws have*

been

been in the Realm in behalfe of Tythes, nor were thoſe ancient royal Decrees made but at times when the Church *then extant floriſht, not only in her innocency, but free from Romes ſlavery, & that plainly appeares.*

Firſt, By thoſe ancient Manuſcript Homilies *extant in* Bennet Colledge in Cambridge, *when that incomparable Knight,*

Knight, Sir. Henry Spelman, *that hath deſerved ſo well of all the lovers of Learning and this Nation, was erecting his* Saxon Lecture *in that Univerſity, wherein as* Mr. Wheelock, *the then Reader, hath wel obſerved, That thoſe* Homilies do not only inculcate the ſanctification of the Saboth, and other Pieties, but the greateſt part,

part, if not every one of the Articles of Religion maintained amongst us is asserted.

2ly *From one of those* Saxon Sermons *not only recorded by* Mr. Fox, *but Printed by it self in the very beginning of Queen* Eliz. *dayes, and attested by* 14 *or* 15 *Bishops (some of which were Confessors and Exiles in Q.* Maries *time) to be agreeable to the old*

old Original, *wherein all or moſt of the Romiſh Points and Doctrines are confuted: And then after this Nation had recovered freedome from under the Romiſh Mytre, and ſhook off that yoke that had lain ſo heavy;* Tythes *had been retained, if thought to be Popiſh or Antichriſtian, and* Edw. *the ſixth, in whoſe time ſo many famous Laws*

were

were made againſt that See, and all her introduc't Doctrines, was ſo far from declaring any thing againſt Tythes, *that he made Laws in the behalf of them; much might be ſaid of him, as that of the* Eccleſiaſtical Reformation *begun in* Henry *the eights time, and brought to ſome perfection in* Edward *the ſixth time; a work firſt aſſigned to*

32 *choice men, and after left to* Arch-Bishop Cranmer, *who took as Assistants,* Walter Haddon, Rowland Taylor *and* Peter Martyr, *who so compiled it as it is now extant, wherein there is a distinct* Title of Tythes, and 19 Chapters, *and surely if those four godly learned men, one pair of* whom *were* glorious Martyrs *had thought*

thought them to be Antichriſtian they would not have been ſo ſerious about them, they that dyed for Chriſt would not have dyed, allowing any Error of Anti-Chriſt; in their bleſſed opinion. I hope the Reader is, ſince it is his deſire that hopes to cloſe his eyes with the ſame, who is, your well wiſhing Friend.

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THE Parsons Guide:

CHAP. I.

Of a Parson and Vicar, his Parsonage and Vicarage, and Profits belonging to them.

THE Parson at first was he that had the charge of a Parish-Church, and was called the Rector of a Church; but he is most properly so called, that hath a Parsonage where there is a Vicarage endowed. The Vicarage is a certain portion of the Parsonage allow-

ed to the Vicar for his maintenance. And this portion in some places is a sum of money certain. In other places it is a part of the Tythes in kind, and commonly the smaller Tythes; but in some few places the Vicar hath part of the great Tythes also: and he that hath the right to, and possession of this, is called the Vicar: and he that hath the other part, is called the Parson, who in some Parishes is the Minister of the place, one they call a Clergy-man or Minister; and in other places he is a Lay-man, where it is an Impropriation.

Parson in a legal signification is taken for the Rector of a Church Parochial, *Parson Ecclesiæ*, because he assumeth and taketh upon him the Personage of the Church, and is said to be seised in *Jure Ecclesiæ*. That in his person the Church may sue for, and defend her Right, and be sued by any that have an elder and better right.

And

And when the Church is full, it is ſaid to be *plena & conſulta* of ſuch a one Parſon thereof, that is, full and provided of a Parſon: that may *vicem ſeu perſonam ejus gerere, perſona imparſonata. Parſon imparſonee*, who is the Rector that is in poſſeſſion of a Church Parochial, be it preſentative or appropriate, that may *vicem ſeu perſonam ejus gerere.*

The Vicar is one that hath a Spiritual promotion or living, which is called a Vicarage, which is a certain portion of a Parſonage allowed to the Vicar for his maintenance.

The profits and fruits of a Parſonage or Vicarage, belonging to the Parſon or Vicar, are his Glebe Land, (if there be any) Oblations, obventions, Offerings and Tythes.

The Glebe is that portion of Land, Meadow, or Paſture, that is belonging to, and parcel of the Parſonage or Vicarage, over and above the Tythes.

Oblations, Obventions and Offerings ſeem to be but one thing, and that which was called meerly Spiritual. The Oblations were ſaid to be ſuch things real or Perſonal, as were offered to God and his Church by Teſtament or otherwiſe. And Obventions did include Oblations and other things now unknown and loſt amongſt us. And of this nature it ſeems the Mortuary is. And the other profits are the Tythes.

Offerings are reckoned amongſt perſonal Tythes, which are ſuch as come by mens honeſt Labour and Induſtry, in ſome perſonal work, Artifice, or negotiation, as by buying, ſelling, merchandizing, or by the Labour of the Hand, as Craftsmen, ſuch as are Carpenters, Maſons, Fiſhers, Fowlers, Hunters, and the like. And theſe perſonal Tythes are the money that is paid in ſome places for mens Trades of profit to them, as Fiſhing, &c. But not of

ſuch

ſuch as Fiſh for pleaſure: And ſo in ſome places Servants pay the Parſon or Vicar a ſmall ſum in the nature of an offering, a tenth of their clear gain once a year, which is ſtill to be paid according to the cuſtom of the place. *Cro.* 1. 247.

CHAP. II.

Of Tythes, and their kinds.

TYthes are a certain part of the fruit or lawful increaſe of the earth, beaſt, or mens labours, which in moſt places, and of moſt things is the tenth part, and hath been by the Law given to the Miniſters of the Goſpel, in recompence of their labour in the execution of their Office. *What they are.*

There are three ſorts of Tythes. Some of them are Prediall; that is, ſuch as come in, and ariſe yearly of the fruit and profit of the earth; ſuch as are *Their kinds.*

wood, corn, grain, hay, the ſeed of Rape, Parſley, Hops, Saffron, Woad, Flax, Hemp, Darnel or Cockle, Fennel, Aniſe, and the like. Such are the fruits of Trees, as Apples, Pears, Plums, Nuts, Cherries, Wardens, Grapes, Maſt, Acorns, and the like. Such alſo (as it ſeems) are Herbs, as Rue, Sage, Mint, and the like.

Tythe-hay alſo is prædial. So it is in a Meadow great or ſmall, or in any place or Augle within the Pariſh Tything-table.

Some of them are Perſonal, and they are ſuch as ariſe and grow due by the profits that come by mans honeſt labour and induſtry in ſome Perſonal work, Artifice or Negotiation, as by buying, ſelling, merchandizing, or by the labour of handicrafts men, ſuch as are Carpenters, Maſons, Fiſhers, Fowlers, Hunters, and the like.

And ſome Tythes are ſaid to be mixt, ſuch are the profits of

ſome

ſome things that ariſe partly from the labour and care of men; and partly from the earth where the things are fed; of this ſort are Cattle, as their young Calves, Lambs, Kids, Roes, the wooll of ſheep, milk and cheeſe of Cowes; ſo the eggs and chickens of Hens, Geeſe, Ducks, and Swans, and the like.

Amongſt Predial Tythes, ſome of them are ſaid to be greater, as Wood, Corn, Hay, and the like. And ſome of them are leſſer, as the Tythe of Herbs, Flax, Hemp, and the like. And all theſe of the one ſort, and of the other, the diſpute is under the names of Tythes of harveſt fruits; of woods felled and preſerved to grow again; of wood not in uſe, nor apt for Timber, but for fire; of trees planted for fencing of grounds, in fields, paſtures, and hedg-rowes, of Turves growing in fenniſh and mooriſh grounds, of paſture ground,

of hay, of wooll, of lambs, o
calves, of pigs, of colts, o
milk, of cheese, of fruits, o
trees, of seeds, of hemp, flax
onions, rape, of Pot-herbs
of mast of Beech or Oak; o
Mils driven by wind or water
of Parks, Warrens, Pools, Ponds
of wild Beasts under custody
&c. of Dove-cotes or Dove
houses, of bees, of fowlings
of huntings, of fishings, o
swans, of geese, of eggs, o
crafts and manual occupations
of Trade by wares, merchan-
dize, *&c.* And about all thes
things especially are all the Que-
stions and Cases that follow
concerning this Subject.

For the better understanding
whereof, take first of all thes
few general Rules and Cases.

1. That Tythes are not due
or to be paid for the yearly
Rent, or value of houses, but
for the revenue and increase
of things: for, a *Modus deci-
mandi* can hardly stand, to rise
and fall according to the Rent
by

by preſcription. Yet that kind of payment in *London* uſed there, is good there by Cuſtom. *Hob.* 11.

2. That Tythe naturally is but the tenth of my revenue of my ground, and not of my labour and induſtry. *Hob.* 250. Where it may be devided, as in graſs it may though not in corn.

3. That Tythes are grantable from Man to Man, as other things are.

4. That in Caſes of Tything, the cuſtom of the place is much to be heeded, both for the matter and manner of Tything.

5. That Tythes they are lay Chattels, for the Recovery of which the King and others may have remedy by our Law.

6. The Parſon or Vicar is to take away his Tythes in a convenient time after they are ſet forth. And if he ſhall ſuffer them to ly long upon the Land to the prejudice of the owner of the ground, he may have his Action of the Caſe againſt him for it. *Ley.* 70.

CHAP. III.

Of the Nature of Tythes.

TYthes by our Law were accounted an Eccleſiaſtical Inheritance, and collateral to the State of the Land out of which they come, which of common right are to be paid out of all Lands, Meadows and Paſtures, and which of their proper nature originally were due only to Eccleſiaſtical perſons by Eccleſiaſtical Law; and till they were ſevered, were eſteemed meerly Eccleſiaſtical: for the ſubſtraction whereof, no remedy was given by the Common Law. Neither can any union of poſſeſſion extinguiſh or ſuſpend them, but they remain ſtil *in eſſe*, and might be demiſed or let to any Spiritual Perſon. And if a perſon impropriate had infeoffed another part of his Glebe, or had made a Leaſe of

if

it to him, yet he ſhould have had Tythe thereof ſtill; ſo that a man might have had Tythe againſt his own Feoffment, for they were not claimed in reſpect of any ownerſhip in the Land, but *ex debito*, by the Law of God. So if a Parſon purchaſe Land within his Rectory, and after Leaſe the Parſonage, the Leſſee ſhall have Tythe of this new purchaſed Land. And a Lay-man by the Common Law, could not have had an Inheritance deſcendable and grantable of Tythes, as of other temporal Poſſeſſions, neither will they paſs by the ſame words in Grants, as other temporal Poſſeſſions will do. And therefore if one grant a ground *cum proficuis, & commoditatibus eidem pertinentibus*, the Tythes will not paſs by this. But now the Law is changed herein, for they and other Eccleſiaſtical Duties, eſpecially ſuch as came to the Crown by the Statutes of 27 *H.* 8, 31 *H.* 1. 1 *Ed.* 6. are by thoſe Statutes,

Statutes, and the Statutes o
32 *H.*8. and 1 *&* 2 *Phil. & Ma*
in the hands of Lay-men tempo
ral Inheritances, and are of th
nature of other Lands, it ſha
be accounted Aſſets in the hand
of an Heir. The wife ſhall b
endowed of it, the husband Te
nant by the courteſie for them
real actions may be brought
and they have all other inci
dents of Lay-Inheritances. *Co*
11. 14. *Dyer* 34. *Cook* 1. 3. *Co*
upon Litt. 5. 159.

But Tythes being actuall
diſcharged and extinct by a *Mo*
dus decimandi, they are turne
into a Lay-Fee as well as th
nine parts. *Hob.* 42.

But that which is given i
liew of Tythes is turned into
Spiritual Fee. *Idem.*

And theſe Tythes are due t
the Church of common Right
and were due to the Churc
before the Council of *Later*
Hob. 296.

If any Lay-man that hat
Tythes be diſſeiſed of them, o
wronge

wronged in them; or they be kept from him, he having a lawful Intereſt in them or Right to them; He or his Heirs, Executors, *&c.* may have his remedy for them in the Kings Temporal Courts by the Ordinary way as the Caſe is. But this doth not take away the ordinary remedy that men may have in the Eccleſiaſtical Court. But in that caſe the Law is as it was before the Statutes. *Dyer* 133. *Co.* 11. 13.

CHAP. IV.

Who muſt pay Tythes at this day, and to whom, and who are capable of receiving and retaining of Tythes, and by what Title, and how.

TYthes by the Common Law are due of common right out of all things; and every man at this day Alien and Denizen,

nizen, is bound to pay the ſame that cannot ſhew a ſpecial exemption and freedom, by compoſition, cuſtom, preſcription, or ſome Act of Parliament. So the Kings have paid no Tythes ſometimes for their Lands in their own hands. So neither the King, nor his Patentees are to pay Tythe for ſome of his ancient Foreſt-Lands that lye in no Pariſh, or between two Pariſhes; this is not to pay Tythe. And ſo the Vicar in ſome places doth pay no Tythe to the Parſon, ſo long as his Vicarage-Land is occupied by himſelf. *Cro. Jur.* 60. *Crook* 2. 44. *Broo. Diſmes* 10. And it is ſaid, If a Biſhop had held Land diſcharged of Tythe, and made Feoffment or Leaſe of it, that his Leſſee or Feoffee ſhall not pay for it, *Cook* 2. 44.

And as to the perſons to whom, and capable of receipt of Tythe, albeit, by the Common Law anciently, no Lay-perſon was capable of them, ſave only

by

by way of diſcharge; as where a Pariſhoner had compounded with the Vicar or Parſon for his own Tythe: Yet at this day any man may have them as other Lay-Inheritances; and Laymen (as they call them) as well as Clergy-men, have them. And to make Clergy-men capable of them, there were heretofore many things required, as Examination and allowance by the Biſhop, ſubſcription to the Articles of Religion, Inſtitution and Induction into the Parſonage or Vicarage, to which the Tythes belong. But in theſe things the Laws are changed at this day. And therefore it ſeems ſuch a Parſon once capable of Tythes, cannot be made uncapable afterwards as heretofore, unleſſe it be where he hath one Benefice of 8 l. a year and he take another; for in this Caſe it ſeems he ſhall loſe the firſt. But for this ſee the Statutes of 21 *Hen.* 8. 13. 28 *Hen.* 8. 13. *Cook* 4. 79. & 6. 20. *Plurality.*

A

Preſcription. A Parſon or Vicar may have Tythe out of his Pariſh, by a ſpecial preſcription. Or he may preſcribe to have a ſum of Money for Tythes within his Pariſh of any certain man there in lieu of Tythes. And alſo another man may have Title to a portion of Tythes by preſcription. *Bro.* 85. *Cook* 11. 19. *Book of Entries. N. B. f.* 9. *Cook* 2. 45. *Cook* 4. 49. And a man may have his own Tythe of the Parſon by agreement between them, for the Parſons life, or how they pleaſe.

The Parſon may have the great, and the Vicar the ſmall Tythes; And ſuffer it to be reckoned amongſt ſmall Tythes, ſo that if it be in a great Field where was Corn, that the Parſon had; if it be now ſowed to Saffron, the Vicar not the Parſon ſhall have it. And if new Corn be ſowed in a Field or Orchard, the Parſon ſhall have it, though the Vicar had what was ſowed before.

CHAP. V.

Of what things Tythe is to be paid, and of what not, and out of what Land, and how.

IN general, the rule is, that Tythes muſt be paid of all things that are of profit, and that ariſe from year to year, eſpecially of the things wherein the induſtry of man is helping, as in all things it is more or leſs helping. *Cook* 11. 16. *Fitz. Nat. Brev.* 53. 32 *H.* 8. 7. And ſo it is to be paid for, and out of all things within (not without) the Pariſh, that ariſe, grow, and happen from year to year by the Act of God alone, or by the Act of God and man together. But more particularly,

Tythes are to be paid of Houſes and Mills. Firſt, Regularly

ly no Tythe is to be paid out of Houſes of habitation, nor out of the Rent reſerved for them being let. But by a ſpecial cuſtome, or by an Act of Parliament (as in *London*) there it may be Tytheable. And as time out of mind it hath been uſed to be paid for them, there the ſame muſt be paid ſtill. The Tythe for houſes in *London*, is 2 s. 6 d. for every pound of the Rent. And this is to be raiſed and made up according to the uſage and cuſtom of the City. *Co.* 11. 16. *F.N.B.* 53. 37 *H.* 8. *cap.* 12. 32 *H.* 8. *cap.* 7. *More*, *caſe* 12. 86. *Hob.* 11. *Co.* 11. 16. And a preſcription to have Tythe of houſes according to the Rent, is not good; for no Tythes are to be paid for houſes in any City but *London*, *Hob.* 11.

And the Act of 2 *E.* 6. *cap.* 13. is not to reach to *London* or *Canterbury*, or the Suburbs thereof, nor to any other Town or City, where the Inhabitants thereof have been uſed to pay Tythes by houſes.

houſes, *Croo. Abridge. caſe* 3534. *Tran.* 1. 25.

All ſorts of Trees, but Timber-trees, are to pay Tythe (that is) their tenth of increaſe, living or dead, uſed or ſold by the owner, for the body, branches, bark; fruit, root and branches that grow out of the root. And within this rule all fruit-trees, as Apple-trees, Pear-trees, Nut-trees, Walnut-trees, and the like, are to yield the tenth of their increaſe of fruit yearly; and if they be cut down, the tenth of the body whether ſold or kept; and if they be pared, the tenth of their parings, whether ſold or kept. So Tythe is to be paid of the fruit, body, bark and branches of all other Trees not apt to Timber, as Willows, Sallows though they are above twenty years growth, or of any age whatſoever, and were never cut before. So alſo Tythe is to be paid of *Silva cædua*; that is, Underwoods and Coppices felled.

lèd and preſerved to grow again, and which by good huſbandry may grow again. And of all theſe things the Parſon is to have the tenth part, as the owner doth, and at the ſame time when the owner doth receive his nine parts.

Of Wood cut for his own uſe.

But of the Underwoods of Coppices, parings of Fruit-trees, or other Trees cut only for mounds, or for plow-geer, for hedging and fencing of the Corn-fields or other ground within the Pariſh, or for fuel for the maintenance of the plow or pail, no Tythe is to be paid for it, though the Vicar have the Tythe wood, and the Parſon the Tythe of the places incloſed. Nor is Tythe to be paid of Under-woods, which are digged up by the roots. Nor (as it ſeems) for the wood of Coppices or trees that a man doth cut or ſpend in his own houſekeeping, though he ſpend much, by *Hobbard* Chief Juſtice. But if a Parſon can alledge a ſpecial

cuſtome

cuſtome for it, he may have Tythe for this alſo, *M. 4. Jac. B. R.*

But for Timber-trees, ſuch as are Oak, Aſh, and Elme, which are eſteemed Timber after they are twenty years old in all Countries; and beech, horſe-beech, horn-beam, maple, aſpe, and haſel, any of which may be, and are eſteemed Timber in ſome Countries, as the uſage of the Countrey, or the plenty or ſcarcity of other Timber there, is; for theſe, either living or dead, for their bodies, branches, bark, roots or germines that grow out of them, no Tythe is to be paid at all, in any caſe; but Tythe is to be paid for all this Timber wood, if it be cut within twenty years after the firſt planting of it. *More, Caſe 1271.* *Timber.*

Tythe ſhall be paid of Birch but not of Oaks. *More, Caſe 1271.*

Nor of dotards or the branches of Trees of twenty years growth.

growth. *More*, *Case* 1272.

And for Birch above twenty one years growth, Tythe ſhall be paid. *More*, *Caſe* 1270.

No Tythe ſhall be paid for broom or fuel ſpent in any houſe of the Pariſh. One may preſcribe to pay the tenth cheeſe between *May* and *Auguſt*, for all Tythe-milk within the year, and not the tenth part of the milk; for the cheeſe is made by labour and charge. *More*, *Caſe* 1279.

For the opening whereof (in relation to Wood and Trees) further, theſe things are to be known.

1. If the Parſon have Tythe of his fruit of a tree, and the ſame year the Owner doth fell the tree, and make it into billets or fagots, in this caſe the Parſon ſhall not have Tythe for the tree; for it is a rule, that he muſt not have Tythe of one thing twice in one year.

2. Beech in a Country where there is abundance of it, is not

to

to be accounted Timber, nor to be Tythe-free. 16 *Jac. Co. B. Pinder's Case.*

3. Cherry-Trees in *Buckingham* shire have been adjudged Timber and Tythe-free. *Pasch.* 19. *Jac. B. R.*

4. If a man lop a Tree under twenty years growth, and after suffer the body to grow past twenty years growth, and then lop it again; in this case no Tythe shall be paid for it, though it were not Tythe-free at the first cutting. *Co. B.* by the whole Court. *Brown 1. part.* 33.

5. If wood be cut to make hedges, which is not Tytheable, and there be a little remaining or left of it, no Tythe shall be paid for this remnant.

6. If wood be cut down and imployed for Hop-poles, where the Parson or Vicar hath Tythe Hops; in this case he shall not have Tythe of Hop-poles.

7. If a great Wood doth con-

sist

ſiſt for the moſt part of Under-wood, which is Tytheable, and ſome great Trees of Beeches or other wood grow ſcattering amongſt them; in this caſe Tythe may be paid, and muſt be, unleſs the uſage be otherwiſe of all both great and ſmall together. And ſo if a Wood do conſiſt for the moſt part of Timber-trees, and there is ſome ſmall parcel of Under-wood or buſhes growing in the ſame Wood, no Tythe ſhall be paid for this Underwood or buſhes. *Trin. 19. Jac. B. R. Adjudg. 16. Jac. in C. B. Leonards Caſe.*

8. No Tythe is to be paid of Common or Eſtovers, the wood that he burns in his houſe.

9. No Tythe ſhall be paid of Willows that grow in the ſoyl of a Mannor, when felled, though it be waſt to fell them. *Hob. 219.*

Nor ſhall they be paid of Willows within a Country where they are uſed as Timber. *Hob. Idem.*

Tythes

Tythes ſhall not be paid of Beeches above twenty years of growth being Timber, nor of Oaks decayed that are not Timber, and be converted to firewood. *More, Caſe* 716.

No Tythes ſhall be paid of the Lops of Trees over twenty years growth. *More*, *Caſe* 158.

For Agiſtment, Tythes ſhall not be paid, nor for wood for hedgward to incloſe Corn, nor for fuel for Eſtovers, nor for ditching in the Marſhes. *More, Caſe* 941.

Nor of Slates or Quarries of Slate or Cole. *More*, *Caſe* 1275.

Timber-trees once diſcharged of Tythes ſhall be for ever diſcharged, though *mortua. Croo.* 3. 477.

If one gain Land from the Sea by great coſt, and turne it to arrable, he muſt pay Tythe of it. *Bulſtr.* 8. 165. *Fenny Land drayned.*

See for all theſe matters, within this point of Trees and

Wood, *Cook Rep.* 11.48, 49.81. *Plow.* 470. *Brownlows Rep.* 1. *Part.* 94. 2. *Part.* 150. *D. & St.* 169. Where and how this is to be paid and delivered, see more in *Chap.* 5. *Sect.* 1.

Sect. 2. *Of Mines and Quarries.*

No Tythes are to be paid of Mines or Quarries, of Iron, Brass, Tin, Lead, Coals, Stone, Tile, Brick, Lime, Gravel, Marle, Chalk, and the like, which a man doth find and make in his own Land, for they are parcel of the Inheritance, and the Parson or Vicar hath Tythe of the Grass and Corn upon the ground; and it is a rule, the Land must not pay a double Tythe; and besides it is not a yearly profit. *Register* 51. *Fitz. Nat. Brev.* 53. 9. *Broo. Disme* 18.

Of Houses.

No Tythes regularly are to be paid for houses of Inhabitation, nor of any rent reserved upon any demise of them, for Tythes are to be paid of things that renew yearly by the act of God. But by a special custome,

cuſtome, or by an Act of Parliament, as in *London*, where the Parſons have 2 s. 9 d. out of every pound rent in lieu of Tythe, there it is good enough, *Cook* 11. 16. *Fitz. Nat. Brev.* 53. 37. *Hen.* 8. *Ch.* 12.

Of Barren Heath, and Waſte Ground.

If any barren heath, or waſte ground, that is barren in his own Nature, and that cannot be fitted for husbandry without an extraordinary charge, although it may pay Tythe of Wooll, or Lamb, or any things, or the Tythe that it formerly paid, yet it ſhall pay no Tythe for Corn for ſeven years after they have by their husbandry improved it, and made it fit for Tillage. But if a Wood be grubbed up, and made fit to plough, this muſt pay Tythe preſently. So if it become barren by a ſudden accident of inundation, or the like, or by being overgrown with buſhes or the like, and it be reduced, this muſt pay Tythe preſently. *M.* 11. *Jac. C. B. Sharrington's*

Case, Dyer 170. 2 *Ed.* 6. *Ch.* 13.

And if its barrenneſs be not by nature, but by ill husbandry or neglect, it ſhall not for this be diſcharged of Tythes for the firſt ſeven years, upon the Statute. *More, Case* 1278.

Fenny Land drayned, ſhall pay Tythes notwithſtanding the Statute of barren Land. *More, Case* 603.

Tythes ſhall not be paid of a ground that is *Inapte natura*, barren. But if Underwoods be digged up by the Roots, and hedge-rows, theſe ſhall pay Tythe. *M.* 11. *Jac. C. B.*

Of Mills. Tythes are to be paid for all new Corn-mills, be they wind or water Mills; and for fulling, Paper, or Apple Mills, that are common and publick Mills; and whether they be driven by wind or water, ſome Tythe or other is to be paid for them. But for an Old Corn Mill, that no Tythe was ever paid for, no Tythe is to be paid, except perſonal

perſonal Tythe, as for a Trade of profit, and ſo it will be for the other Mills. But ſee how it is to be paid, *Chap.* 5. *Sect.* 1.

Tythes are to be paid of all new Corn Mills, be they Wind, or Water Mills.

And for Fulling Mills, Paper Mills, or Apple Mills that are common and publique Mills, (whether they be driven by wind or water) ſome Tythe or other is to be paid for them. But for an old Corn Mill for which no Tythe was ever paid, no Tythe is to be paid, (except it be a perſonal Tythe, as for a Trade of Profit:) And ſo it will be for other Mills.

And the Tythe of new Corn Mills is not to be the Tenth penny of the Rent, but the Tenth meaſure of Corn, or the Tenth toll-diſh if there be not a cuſtome for it in the place. But the Millard for his Fulling-Mill, Rape-Mill, Paper-Mill, Iron-Mill, Powder-Mill, Lead-

Mill, Edge-Mill, Copper-Mill, and Tin-Mill, and ſo for an ancient Corn-Mill, is only to pay perſonal Tythe.

And where a Rate Tythe is paid for two Mills in one houſe, and one of them is made a Corn-Mill, the Tythe in kind, ſhall be paid for this Mill.

And if one pair of Millſtones be turned into two pair of Millſtones, now both of them ſhall pay Tythe, and their Priviledge will be loſt. *Paſch.* 17. *Jac. Johnſons Caſe*, *F. N. B.* 1. *G. Co.* 244. *Brownl.* 1. 31.

And yet ſo forth of a Fulling-Mill that Fulled every week forty cloathes, by which they gained 2 s. a cloath; it was held no Tythe was to be paid for them. *Croo.* 2. *Abridg. cap.* 2638.

And if a Mill be erected upon Land diſcharged of Tythes by the Statute of Monaſteries, Tythe muſt be paid. So where-

ever

ever it be erected of a new Mill ſet up in a mans own ground. *Croo.* 2. *Abridg. Caſe* 1522.

But no Tythe is to be paid for a new Iron, Fulling, Lead, Powder, Edge, Copper, and Tin, for theſe are but Engines of their Occupation. *Johnſons Caſe, Paſch.* 7. *Jac. Croo.* 2. 532. *Bulſtr.* 3. 212.

For Stables in *London*, no Tythe is to be paid. Nor will a Preſcription lye for this. *Hob.* 10, 11.

Tythe is to be paid, (that is) the Tenth part of the profit of all the Cloſes, Grounds, and peices of earable Meadow and Paſture within a Pariſh. Sowed to wheat, barly, beans, peaſe, and the like, all which are to be ſet out according to the Statutes, and the uſe of the place. *Brownl.* 1. 14.

Of Corn.

If the Parſon demiſe his glebe to a Lay-man, the Lay-man ſhall pay Tythe of it. But if he keep it in his own hands Contra. *Owin* 35.

Of Turves. Tythes are to be paid of Turves that grow in fenniſh and mooriſh grounds, when they are uſed for firing.

Of Heath, Furs and Broom. Tythes ſhall be paid of heath, furrs and broom, unleſs the owner can preſcribe, or make good a ſpecial cuſtome of payment of milk or calves, *&c.* of the Cattel kept upon the ground. *M.* 29. *El. B. R. Adjudg.*

Sect. 3. *Of Graſs, cut or eaten.* Tythe is to be paid of the graſs growing on the ground, whether it be cut for hay, or eaten by cattel, to be ſet out according to the cuſtome of the place: and as to this kind of Tythe theſe things are to be known.

Rate Tythe. A rate Tythe to be paid according to the cuſtome of the place for the feeding of Sheep and all other Cattel, (ſave only Oxen that labour, and the young Cattel that are bred for Oxen or Cows) as for Horſes and Cattel that are fatted; for Tythe muſt be paid for theſe,

theſe, for the Paſture and profit of the Cattel, whether they go on the Common or elſewhere.

2. If two Pariſhes together have Common, becauſe of vicinage, and the Cattel of the one ſide do ſtray to the other ſide, and there abide; in this caſe no Tythe ſhall be paid for this to the Parſon of the Pariſh where the Cattel do ſtray, but to the Parſon of the other Pariſh. So if Sheep ſtray out of one into another Pariſh, and there yeane, no Tythe is to be paid for thist o the Parſon of that place; but if they go there by the ſpace of one Month or more, for this a rate Tythe muſt be paid to that place where they are for a Moneth together. And ſo in all caſes where Sheep go a while in one, and another while in another Pariſh. *Trin. 7. Jac. B. R. Broo. Diſmes* 16.

3. If Sheep after they be ſhorn die before *Eſter* next following,

it is ſaid no Tythe ſhall be paid for their wooll, unleſs the Parſon or Vicar that claims it, can alledge a ſpecial preſcription for it. So no Tythes are to be paid of the pelts or fells of ſheep which die of the rot, without a ſpecial preſcription for it. *Trin.* 3. *Car. B. R. Aſhton's Caſe.*

Grounds let.

4. Tythe muſt be paid for all the grounds within the Pariſh; and therefore if the grounds within the Pariſh be let, or the herbage there be ſold to a ſtranger out of the Pariſh, the Tythe muſt be paid to the Parſon, and that by the Owner of the Cattel, unleſs the courſe there be otherwiſe.

Agiſtment, or tack of Cattel.

5. It ſeems Tythe is to be paid for the Agiſtment, that is taking in of Cattel of ſtrangers in the pariſh: And that to be paid by the owner of the Land that took them in, and not by the owner of the Cattel, for the Parſon may not know the owner of the Cattel. 17 *Jac. B. R.*

But

But if there be any cuſtome againſt it, this may prevent it, and make it payable by the ſtranger.

6. No Tythe is to be paid for the herbage or feeding of riding horſes, that the Pariſhioner doth uſe for his own riding. And if a man let out his own Paſture Lands, reſerving the paſture for one horſe to ride about his own affairs, or for husbandry, no Tythe ſhall be paid for the Paſture for this horſe. But if a man keep or breed a horſe or horſes, in his paſture to ſell them, there Tythe ſhall be paid for the horſes paſture. *H. 15. Jac. B. R. Hides Caſe.* *Horſes.*

7. No Tythe is to be paid for the graſs eaten by the working Oxen or Horſes about Huſbandry that are uſed in the Parish about Husbandry. But if the Pariſhioner uſe them to other purpoſes within the Pariſh, or for Husbandry without the Pariſh, it may be otherwiſe. *Plough-Cattel.*

wise. *M.* 8. *Jac. Co. B. in Baxters Case.*

Sect. 4. *Cows and barren Cattel.*

8. No Tythe shall be paid for the feeding of Cows that give milk, nor for barren and dry Cattel that are bred for the plough or pail, whether they feed in the inclosed, or in the common grounds of the Parish. But if a man keep Cattel untill they are ready for the pail or the plough, and then sell them and make profit of them, in this case he is to pay Tythe for them; for if the owner feed his ground with Cattel that bring no profit to the Parson, he must pay Tythes for them. *M.* 8. *Jac. Co. B. Baxters Case. Trin.* 9 *Jac. B. R. The whole Court.*

Strangers renting within the Parish.

9. If a stranger feed a ground within the Parish with his Cattel that do bring no profit to that Parson or Vicar, he is to pay Tythe for it. And therefore it seems reasonable, though it be his own ground that is the stranger, and he feed them with his own Cattel that do work

in

in another Pariſh, that he ſhould pay as a ſtranger that doth rent a ground within the Pariſh.

10. No Tythe is to be paid of the Eamouth or after-paſture, after the graſs is mowed and Tythe hath been paid of it, unleſs by covin there hath been more graſs left than is uſual. Nor is there any Tythe to be paid for the herbage of the Cattel that eat up the ſame graſs, unleſs there be ſome fraud in the caſe. *Paſch.* 17. *Jac. Co. B. Adjudg. M.* 6. *Jac. Co. B. Smiths Caſe. More, Caſe* 1230. *Eamouth, or after-paſture.*

11. No Tythe is to be paid for the graſs or herbage of the ſtuds, or meers of ground at the Lands end, and adjoyning to the arrable Land, where the Land it ſelf doth pay Tythe. And ſo if Lands lie fallow every ſecond or third year, the Owner ſhall pay no Tythe for the paſture of this Land, nor for feeding upon the ſtubble, albeit

it

it be fed with barren Cattel. *Pasch. 7. Jac. Co. B. Adjudg.* And yet if he keep it lay beyond the course of Husbandry, in this case he is to pay Tythe again.

12. No Tythe is to be paid for the herbage of the ground whereupon Corn hath been sowen that hath paid Tythe, no more than for the raking of the stubble. *Pasch. 7. Jac. Co. B. Adjudg.*

Rakings of stubble.

13. If a man bring a flock of Sheep to dung the Land, and they come by night only and lie there, no Tythe is to be paid for this; but if they feed their half their time, they will be Tytheable.

For the time when and how these Tythes are to be paid and done, see in *Chap. 5. Sect. 1.*

Sect. 5. Of Corn sown.

Tythes are also to be paid of all such things as come in yearly by the blessing of God, and the industry of the party together. And therefore Tythes must be paid of all kind of Corn sown

ſown upon the ground ; as Wheat, Rye, Barley, Beans, Peaſe, and the like, to be ſet out according to the cuſtom of the place. So alſo Tythe muſt be paid of Plants, Herbs, and ſeeds of Woad, Saffron, Flax, Hemp, and the like.

And as to this, theſe things are to be known ;

1. No Tythe is to be paid for the after-rakings, or ſtubble of Corn, when Tythe hath been paid for the Corn it ſelf, unleſs it be where there hath been fraud in cutting it over-long. And ſee *More*, *Caſe* 433. That Tythes of the after-rakings is not to be paid by the Cuſtome of England. And one may preſcribe againſt it to pay it in another manner. *Croo. Abridg. Caſe* 1432. 1361. Yet if the owner ſhall leave ſtanding Corn to bind up his rakings, he muſt pay Tythe of that ſtanding Corn. *Term.* 2. 30. *After-rakings.*

2. No Tythe is to be paid for the courſe Corn, as Vetches, Tares,

Tares, and the like, which is eaten up by the Cattel that do the Husbandry there: whether it be eaten green or ripe, or eaten upon the ground where it groweth, or elſewhere, unleſs the Parſon have a ſpecial cuſtom for it.

Change of Grain. 3. If Corn be ſowed where Woad was ſown, or where other things grew, the Tythe ſhall be paid of this and in its own kind alſo. So if Woad or other things be ſowed where Corn hath been ſowed, the Owner of the Soil muſt pay his Tythe, and pay it in kind of that which groweth there, as he doth in the change of Wheat, Beans, Barley, *&c.*

4. If the Soil of an Orchard be ſown with any kind of Grain, the Parſon will have Tythe of it; although he have Tythe of the fruit of the Trees, for they are of ſeveral kinds.

And if the owner of the Land do not manure it, yet he muſt pay ſome Tythe or other to the Parſon of it.

6. The

6. The common courſe of ſetting out and delivering Corn by the Common Law, is by the tenth Shock, Cock, or Sheaf. But if the cuſtom of the place be otherwiſe, the Parſon muſt ſit down by it. And if there be a cuſtom to put the Corn into ſhocks, and that every ſhock be ten ſheaves, and that the Parſon muſt have the tenth ſhock, ſo it is to be paid. But where there is no ſpecial Cuſtom in the place to bind the owner ſo to do, he is not bound to ſet the Parſons part of the Corn up an end in ſhocks. *Smiths Caſe. C. B.* *Sect. 6. Cattle and Fowl.*

Tythes alſo muſt be paid of Calves of Kine, Lambs of Sheep, young Piggs of Sowes, Colts of Mares, Kids of Goats, *&c.* Alſo of the Cheeſe and Milk of Cowes, Sheep and Goats, and of the wooll of Sheep; and of the Eggs and young of Hens, Geeſe, Ducks, *&c.* and of the Honey and Wax of Bees, and for dry Cattel, and for fat

fat Beasts sold and killed, and according to the course of the place.

For the pasturage of young barren Cattel bred for the pail or plow, no Tythe shall be paid. *More, Case* 1280. 1278.

A penny for every milch Cow cannot be a satisfaction for Tythe of more than this one Cow, and not for other Cattle. *More, Case* 1278.

But for the further opening hereof, these things are to be known.

1. If the Parishioner have but nine Piggs, or six Calves, the Parson can have no Tythe in kind that year, without a special custome to warrant it, as in many places there is; for these things are intire, and not dividable as Wooll is. And therefore the Parson must have his Tythe *pro rata*, either in money the same year, if there be any custom for it, or in Kind the next year, and so reckon both the years together. *M.* 7. *Jac.*

Jac. Co. B. And if a Parishioner have but one Cow, or milk his Cow every second day, so that he can make no Cheese, in this case the custom of the place is to be observed, so that something be paid; otherwise no custom in this case will bind; so for Calves, Colts and Kids, when they are under the number of Tythe in kind; and if there be no custom in it, the Parson must have the Tenth when ever it comes.

2. It hath been said, that no Tythe is to be paid for dry Cattel bred for the Plough or Pail, unless they be sold away before they be put to that use; for Tythe must be paid for such Cattel, and for fatted Cattel sold or killed for the house after the custom of the place. *M.* 17. *Jac. B. R. curia. M.* 2. *Jac. B. R. Webs Case.* And though at first they were bred for the plough or pail, yet if after fatted and kil'd, or sold, Tythe must be paid for them. *M.* 8. *Caroli*, by three

Dry Cattel.

three Juſtices. More, Caſe 623. *and* 1278.

Locks of Wooll.

3. Tythe muſt be paid of the locks and flocks of Wooll, after the Wooll made up, if they be more than ordinary, and left deceitfully; otherwiſe not.

Rate Tythe for wooll of ſheep, and of young Cattel.

4. Where ſheep be removed from one Pariſh to another, each Parſon muſt have *pro rata*; but under three days, no rate is to be paid: As for Example, If forty ſheep yield eighty pound of Wooll, and theſe have been fed and lain all the year in one place; in this caſe the Parſon of the place muſt have all the Tythe; if the ſheep were there but half the year, then he is to have but forty pound of the wooll; if three Months only, then but twenty pound of the wooll; and ſo ratably for four or five Months, more or leſs. And the Parſon in whoſe Pariſh the ſheep lay and fed but one Month, he ſhall have only the Tythe of the twelfth part of the wooll: And if

if the ſheep feed all the year in one Pariſh, and lie in another Pariſh, the Tythe ſhall be divided betwixt the Parſons. And if ſheep come from one place, and be ſhorn in a place where they were not before, it ſeems the Tythe muſt be paid where the ſheering is, unleſs it appear to be paid to the Parſon of the place from whence they came. And ſo of the young of Cattel, Lambs, Calves, Piggs, Colts, and the like, where the Dam was removed from one place to another, a rate Tythe muſt be paid to the Parſon according to the times of their aboad in the ſeveral places, from the times of their engendring by the Month rate. *Broo. Diſmes* 16.

5. If any have Cattel Tytheable feeding in any waſte place, not commonly known to be in any Pariſh, yet the Tythe thereof is to be paid, and to be paid to the Parſon of the place where the owner of the Cattel doth dwell.

6. When

6. When the Tenth part of the Milk is paid, there muſt be no Tythe paid of the Cheeſe which is made of the other nine parts of the Milk. And ſo where Tythe is paid for the Cheeſe, no Tythe is paid for the Milk.

But ſee more of this, and when, and how this is to be paid and delivered, in *Chap.* 5. *Sect.* 2.

Sect. 7. *Of Parks, Warrens, Pools and Dove houſes.*

Some Tythe is to be paid of Parks, Warrens, Pools, Ponds, and Dove-houſes, and for Coneys, Pidgeons, and Fiſhes. And ſome would have Coneys in a Coniger, Fiſh in a Pond, or ſeveral fiſhing in the nature of Predial Tythes, and that Tenth of the profit is to be allowed.

Coneys, Fiſh, Pidgeons.

But for the opening of this, take theſe things.

1. That where the things bring in a certain profit, and without much charge, as Coneys, Fiſh and Pidgeons, there is great reaſon the Parſon or

Vicar

Vicar ſhould have the full Tythe of them; and in theſe caſes a diviſion may be eaſily made.

2. The Pidgeons are a ſenſible loſs to the Parſon in the deſtruction of Corn, and good reaſon then the Parſon ſhould have ſome profit of them.

3. In ſome caſes, as where Gentlemen have turned their Fields into Conigers, and laid down in the Tillage, the loſs of the Parſon hath been notorious, and the caſe grievous hurtful to the Parſon and Commonwealth, profitable to none but the Owner of the Land; theſe caſes deſerve no favour.

4. We conceive the Parſon will have no remedy in this caſe by Law; and that in all theſe caſes there is nothing to be had but what the cuſtom or uſage yields; for Deer and Coneys being wild are not reckoned a mans own till they are catched. *Jure Naturæ.* And a man is to pay Tythe of nothing whereof he hath not

a property, except only the perſonal Tythe, which is a ſmall matter. When Pheaſants, Partridges, Swans, and ſuch like wild things of profit become tame, it ſeems they muſt pay Tythe, but not otherwiſe. And for ſuch things of pleaſure as are of no profit, as Hawks, Hounds, Apes, Thruſhes, Poppingjayes, and the like, no Tythe ſhall be paid of theſe.

Matters of pleaſure.

Yet ſee *More*, *Caſe* 599. That Tythes are not payable for tame Turkies, Feſants, or Partridges, nor for their Eggs. *More*, *Caſe* 322.

For Turkies.

And for a Park diſparked, as where a Park pays ten ſhillings for all Tythe, and it is now diſparked and ſown with Corn, here the ten ſhillings only ſhall be paid. But if the preſcription be for the Deer, and herbage of the Park, and not for all the Park, and it be diſparked and ſown with Corn, Tythes in kind ſhall be paid.

So

So where one ſhoulder of every Deer is preſcribed to be paid for all the Tythes, and it is diſparked, herewith in kind ſhall be paid. And if the perſcription be to pay ten ſhillings and a ſhoulder of every Deer, and it is disparked, here it ſhall pay Tythe in kind, and not the ten ſhillings only, *More, Caſe* 1277. And in *Caſe* 1186.

The Vicar had two ſhillings yearly, and the ſhoulder of every third Deer killed in the Parke, and the Parke was diſparked, And the Judges devided on the point whether the Vicar ſhould have Tythes in kind. ſee it,

Tythes it ſeems are to be paid for Pigeons *More, Caſe* 1270. *In Pigeons.*

Tythe is to be paid of the Plants, Herbs, Seeds, and of Woad, Saffron, Flax, Hemp, Onions, Rape, and the like, And of Pot-herbs, and *de Curtilagijs* of places adjoyning to Mantion-Houſes applied to Seeds and Herbs as they be *Of Plants.*

perceived and taken in Gardens or in the Fields either of the Seed, or of the Heard before the ſeeding time. Unleſs the Parſon agree for it. Tythe muſt be paid of it.

Tything-table.

Queſtion 15. And of theſe when the Owner doth receive his nine parts he muſt ſet forth the tenth part for the Parſon.

Perſonal Tythe. Trades and labours.

Some Tythe hath been by uſage paid in the nature of perſonal Tythe for mens Trades and labours. So Fiſhers, Fowlers, Hawkers, and the like, not ſuch as fiſh, hunt and fowle for pleaſure, but ſuch as make a Trade of, and get by fiſhing, hunting, and fowling, have paid. So Carpenters, Maſons, and all Handicrafts men have paid. ſo Merchants, Mercers, Drapers, and all Tradeſmen: ſo men-ſervants and Maid-ſervants have paid ſome ſmall matter in the nature of an Offering, as the tenth of their clear gain once a year to the Parſon:

Parſon: and this is to be paid ſtill according to the cuſtom of the place.

And for any other things, or for things Tytheable out of any Land, which by the Laws, by any Priviledge, Preſcription or Compoſition ought to be diſcharged, no Tythe is to be paid.

See more of this, and how theſe Tythes ſhall be paid, *Chap. 5. Sect. 3.*

CHAP. VI.

When, where, and how Tithes payable muſt be paid and ſet forth, and when the parſon, &c. may take them.

TO R anſwer to this Queſtion in general, the Law ſaith, that all Tithes and Church-duties are to be yielded and paid according to the uſage and cu-

ſtome of the place where they are to be payed. *Stat.* 27. *H.* 8. 20. 32 *H.* 8. 7. And for Predial Tythes, the tenth part of the profits are to be ſet forth and devided from the nine parts in the place where they grow, before the Owner take away his part thereof: and the Owner is to ſend to the Parſon, who is to ſend his ſervant when the Tythe is to be ſevered, and ſee that it be juſtly done, and then the Law doth give him a reaſonable time to take it away. And if Tythe be once ſet out and divided the Parſon, not the Pariſhioner muſt look to it; for he muſt bear the loſs of it, if any come to it. And this ſetting out of the Tythe, the Law ſaith muſt be effectual; and therefore if the Owner ſet out his Tythe and then take it away again, this is not a good payment of his Tythe: and if the Owner ſell the whole to another before the Tythe be ſet out, with an agreement to deceive the Parſon, this is fraud

and not allowed for a good payment in Law. And this muſt be heeded as to the manner of Tything. That the cuſtome of the place is to be obſerved, for in ſome places the cuſtome is to leave the Tythe in graſs in ſwathes, in other places in windrowes, in other places in graſs-cocks, and in other places in hay-cocks, and either way it is good. So for the time when, and place where, the cuſtom of the place muſt be followed, but the Parſon ſhall have reaſonable time to take it away. *Broo. Treſp.* 125 *Cook 2 Part inſtit.* 610.

Of Trees and Wood.

To give to the Parſon the tenth Acre of wood in a Coppice or the tenth cord (if the cords be equal) is a good payment and ſetting forth of his Tythe, eſpecially if it be the cuſtome of Tything wood in the Country.

The tythe of the Maſt of Oak and Beech, if it be ſold, muſt be anſwered by the tenth penny; if it be eaten by pigs, the tenth of the worth thereof muſt be

answered. And the moſt reaſonable way of payment for any thing ſold, is to pay the Parſon the tenth penny of the mony made thereof.

Of Houſes in London. The payment of Tithes and Church Duties in the City of *London*, which is 2*s*. 9*d*. in the pound of the rent of their Houſes, is to be made according to the uſage there. *Stat.* 27. *H.*8. 20. and 32. *H.*8. 7. 37. *H.*8. 12. *Cook.* 11. 16.

Noſt. 1. *Of Mils.* The Tithe of the new corn-mil muſt not be the tenth penny of the rent, but the tenth meaſure of the corn, or the tenth tole-diſh, if there be no cuſtom in it. But the Millard for his fulling-mil, Rape-mil, Paper-mil, Iron, Powder, Lead, Edge, Copper, and Tin-mils, and ſo for an ancient Corn-mil, is to pay only perſonal Tithe, as for a Handicraft or Faculty. *Paſc.* 17. *Jac. Johnſons Caſe*, *Fitz. Nat. Brev.* 41. *G. Cook* 2. 44. And if a rate Tithe be paid for two mils in one

one house, and one of them is made a Corn-mil, in this case Tythe shall be paid in kind for this mil. And if one pair of mil-stones be turned into two pair of Mil-stones, now both of them must pay Tithe, and the priviledge is lost, *Brownl. Rep. 1 Part.* 31.

Of grass cut or eaten.

The Tithe of hay may be set out and delivered in swathes windrows, or cocks, as the custome of the place is.

Fruits of trees, as Apples, &c.

The Tithe fruit of Apple-trees, Pear-trees, and the like trees, are to be set out and delivered when they are newly gathered; and if then the Owner do not give the Parson notice and set them out, and they be by his means lost or impaired the Owner is chargeable to the Parson in treble damages. The common course of setting out and delivering corn by the common Law, is by the tenth shock, cock, or sheaf, but if the custom of the place be otherwise, the parson

Of corn sowen.

must sit down by it, and if there be a custom to put the corn into shocks, and that every shock be ten sheaves, and that the Parson must have the tenth shock, it must be done by two Justices, *B.R.* But without a special custom binding the Owner of the Land, he is not bound to set the Parsons part of the corn up an end in shocks. *Smiths Case, Co. B. the Court.*

Of seed and herbs.

The Tythe seeds and herbs of gardens and fields, as Rape, Hemp, Flax, Parsly, Fennel, and the like; and of Sage, Mints, Onions, Leeks, and the like, either of the seed or of the herb before the seed time, this must be paid at the time when the Owner doth receive in his nine parts thereof.

Sect. 1. Of Calves and Lambs, or Pigs.

The time when the Calves and Lambs are to be paid and delivered, is when they are weanable, and able to live without the Dam, and unless there be any custom herein against

againſt the Parſon, at this time all theſe young things are to be delivered. And if the owner ſell any Calf or Lamb, in moſt places the Parſon is to have the tenth penny of the mony, and and ſo he muſt, if there be nothing in the cuſtom againſt it. And if the owner kill a Calf, in ſome places the Parſon hath the right ſhoulder, and the cuſtom muſt be yeilded to as reaſonable, if any thing though never ſo little be paid for it, otherwiſe not.

If a pariſhioner have but nine Pigs or ſix Calves in one year, the Parſon can have no Tythe in kind that year for them, but by a ſpecial cuſtom to entitle him to it. And therefore there the Parſon muſt either have his Tythe in money *pro rata*, for that year, or he muſt have his Tythe in kind the next year and ſo reckon both yeares together as the cuſtome of the place is. *M. 7. Jac. B. R.*

And if a Pariſhioner have but

one Cow, or milk his Cow every second day only, so that he can make no cheese in these cases, the custom of the place is to be observed, so that thereby something be to be paid out, for a Custom to pay nothing, will not be good. So for Colts and Kids, when they are under the number of Tythes in kind, And if there be no custom in the place for it. The Parson will have the tenth when ever it comes. *M. 7. Jac. C. B.*

Of milk and cheese.

The Tythe of milk and cheese is to be paid in the season thereof, and so long and so soon as either of them is taken by the Parishioner.

Fitz.

The tenth measure of hony and the tenth weight of wax, not the tenth Bee, nor the tenth swarm of Bees is to be paid for Bees.

Of hens ducks wild and tame.

The Tythe of Chicken and eggs, of all kind of tame birds, or fowl, as Swans, Hens, Ducks, Geese, they are to be delivered and paid, or that which

which is paid for them, according to the cuſtom of the place. But for wild Swans, Geeſe, and Ducks, if they be taken in, and from a certain and known place, they are ſaid to be Titheable as predial Tythes; but if from incertain and unknown places, they are ſaid to be Perſonal Tythes. But I ſuppoſe no Tythe is to be paid in either caſe.

For perſonal Tythes, which is for Trades, Crafts, and manual Occupations, and the profit made thereby: It is provided by a ſpecial Law, That all ſuch as uſe trading, buying and ſelling, handicraft, (except common labourers) ſhall pay their Tythes, as they were uſed to be paid forty years before the Statute of 2 *Ed.* 6. and as of right they ought to be paid. And for this the Pariſhioner doth uſe at or about Eaſter (in moſt places the uſual time of payment for ſmal Tythes) to pay a ſmal ſum of

money,

mony to the Parſon or Vicar. And according to the cuſtom of the place men are to pay; for without a cuſtom for it nothing at this day is to be paid for this: by three Judges. *Co. B.17, Jac.*

And for all, or any of theſe things, in caſe where the Owner may let or ſell the thing of which the Tythe is to be had, the beſt way is to let the Parſon or Vicar have the tenth penny made by the ſale, as they have generally of grounds let to ſtrangers out of the Pariſh, in which caſe the Parſon hath commonly, and muſt have, if there be no cuſtom againſt it, the tenth penny of the Rent.

But in no caſe the Parſon or Vicar may take his Tythe before the ſame be ſevered from the nine parts and Tythed. And if the Owner will not cut his corn till it be ſpoiled, the Parſon is remedileſs. 12 *Ed.4. D. & St.* 169.

CHAP.

CHAP. VII

Who muſt pay the Tythe that is to be paid, and may be uſed for it? and to whom the Tythe muſt be paid?

FOR anſwer to the firſt part of this Queſtion, take theſe things.

1. That generally he that receiveth the nine parts, is to pay the tenth part to the Parſon. And yet if a man that is owner of a Coppice, or otherſuch like thing, and he cut it and ſell it all; in this caſe the Seller muſt anſwer the Parſon for his Tythe, and not the buyer. And therefore if *A* cut the graſs of his ground, and put it all (not ſetting out Tythe) on a rick on the ground and three monthes after he ſell it away to *B.* in this caſe *B.* cannot be ſued for this Tythe. *Hil.* 16 *Jac.* By chief Juſtice

in

in *Ashfields Case.* And if one sell Under-woods standing, the buyer, not the seller must answer the Tythe. But the Tythe due for fellers before the sale, the seller must answer for this.

And so every man at this day, Alien and Denizen, is bound to pay Tythe that cannot shew a special Exemption and Freedom by Compolition, Custome, Prescription, or some Act of Parliment. *Co.* 2. 44.

Yet the King and his Patentees in some cases are exempt from it.

2. Such persons as hold any of the Abbyes lands, that before the dissolution of Abbyes paid no Tythes, are at this day to pay no Tythes for these lands. 31. *H.* 8. *Cap.* 13.

3. He that receiveth the nine parts to himself is to pay the Tenth part to the Parson.

4. If a man buy Under-wood of me, or corn that is Tythe-

able.

able, on the ground ſtanding, he that buyes, and not I, muſt pay the Tythe. But of other things it ſeems the Law is otherwiſe. As where one ſell his ſheep, whereof the Parſon is to have Rate Tythe, the ſeller and not the buyer muſt pay the Tythe for this. *Doct. & Stud.* 171.

5. If one that is Owner of a Coppice, Wood, or any ſuch like thing, and he cut it and ſell it all together, In this caſe the ſeller and not the buyer muſt anſwer the Tythe to the Parſon. And if one cut all the graſs of his ground, and put in a rick there, and three Moneths after he ſell it away, the buyer is not to anſwer for the Tythe but the ſeller. *Hill.* 16. *Jac.* by the cheife Juſtice in *Aſhfields Caſe.*

And if one ſell Under-wood ſtanding, the buyer not the ſeller muſt pay the Tythe. But the Tythe due for Fellers before the ſale the ſeller muſt anſwer for this *Term.*

6. The

6. The perſons chargeable with Parſonal Tythes that are to be paid of cuſtom are ſuch as have been uſed to pay them. But no Parſonal Tythe is to be taken of a Robber, Uſurer, Harlot, or the like for they gaine by their ſin.

Tything-table.

7. If a Pariſhioner die before he pay his Tythe; his Executor, if he have aſſets, muſt pay it.

8. If a Pariſhioner let or ſell his ground or herbage, it is ſaid the Parſon may ſue the Owner of the ground, or the Owner of the Cattel, at his choice, which is reaſonable, if the uſage be not againſt it.

9. If cattel be pawned or pledged the Gage muſt pay Tythe for them. But if I deliver my goods to *H.* to be redelivered to me, I muſt pay Tythe for them.

And for anſwer to the ſecond part of this Queſtion, theſe things are to be known.

1. The Tythes muſt be paid to

to him that hath right to them, be he lay-man, as an impropriator, or a Clergy-man (as we have called them) and be he Parſon or Vicar of the place.

2. The rule generally is this, That the Tythe muſt be paid to the Parſon or Vicar of the Pariſh wherein it ariſeth, and not the Parſon or Vicar of another Pariſh.

3. The Tythe hapning in the time of vacation, the ſucceeding Parſon is to have it; but they that gather it in may keep up ſo much thereof, as to pay them their charg in the collection thereof, and to Miniſters, that did ſerve the Cure there. And if one be put into a place, and then he is removed, and another is put in, the firſt of theſe ſhall have the Tythes that hapned in the vacation time. *Hill* 18. *Jac. woods Caſe.*

4. If any man have Cattel Tytheable feeding in any waſt, or place which is not certainly

known to be in any Parish, the Tythe thereof shall be paid to the Parson of the place where the Owner of the Cattel doth dwell.

5. If a man living in the Parish of *A.* being a Common Fisher, Fowler, or Hunter, Fish, Fowl or Hunt in the grounds of *H.* in *B.* and take Fish there, if this were free and without reward in *H.* then it is a personal Tythe, that must be paid to the Parson of *A.* but if *H.* had money or reward for this, then it is said *H.* must pay the Parson of *B.* as for a predial Tythe.

6. Personal Tythes are allways to be paid to the Parson or Vicar of that place where the Person that is to pay the Tythes, doth dwell.

7. If the Parishioner pay it to one that comes into the place by Simony it is at his own peril if he be forced to pay it again. *Hob.* 168.

8. One that is wrongfully

Collated

collated by the Bishop may be such a person incumbent as is capable of Tythe and may sue for them. *Hob.* 302.

9. The Action for treble damages upon the statute of 2 *E.* 6. for letting forth of Tythes may be had, and is to be sued in the Temporal Courts. *More, Case.* 994.

10. A Clark of a Parish cannot prescribe to have five shillings a year of the Parson for the Tythes of a place in the Parish. But upon a Composition between the Parson and Vicar such a prescription may be good. *More, Case.* 1274.

11. The corn was growing upon glebe land of the Vicar, which was discharged of Tythes being in his own hands, but when let out did pay Tythe. The Vicar sowed the land, and dyed before it was severed, And it was a Question if his Executors should pay Tythes. *Hob.* 188.

12. That by Common Law

no Lay person was capable of Tythe but by way of discharge and composition with the Vicar. But now Lay-men may have Tythe as well as Clergymen. *Co.* 4.79.

13. A Parson or Vicar may have Tythe out of his Parish by a special prescription, or he may prescribe to have a certain summ of Money for Tythes within his Parish, of any certain man there in liew of Tythes; or another man may have a Title to a portion of Tythes by Prescription. Or a man may have his own Tythe of the Parson by agreement between them for the Parsons life, if they agree so. *Co.* 1119. 2.43.

14. If one be put into a Benefice, and then he is removed and another put in; in this case, he that is first put in shall have the Tythes that happen in the Vacation time. *Hill.* 18. *Jac. Woods Case.*

15. That one wrongfully Collated by the Bishop, is such an Incumbent as is capable of Tythes,

Tythes, and may ſue for them, *Hob.* 302.

16. None are to pay Tythes for land diſcharged or privileged from payment. 2 *E.*6. *Cap.* 13.

17. The Tythes that come out of a ground not in any Pariſh the King ſhall have.

18. If one have Cattel Tythable going in a great waſt or Commons whereof the Pariſh is not certainly known, he ſhall pay the Tythes of his Cattel feeding there to the Parſon or Vicar of the place, where the Owner of the beaſts or Cattel dwell 2 *E.*6. *Cap.* 13.

19. Where beaſts or Cattel goe in one Pariſh one halfe of the year, and in another Pariſh another part of the year, In this caſe each Parſon of each Pariſh ſhall have the time, for the beaſts were in either Pariſh, and ſo for more or leſs time if it be but the ſpace of a Moneth. And if it be leſs than a Moneth it ſeems no Tythes is payable. And whether

ther the Cattel be there strayed or otherwise it is all one as to the Parson, unless it be in the case of common *Term. 7. Jac. B.R. Brvo. Dismes 17.*

CHAP. VIII.

Which may the Owner of Tythes, and such like things may recover them being detained.

FOR answer to this, we are to know, that by the ancient Law of the Nation, Tythes were not recoverable by any man in any place but in the Spiritual Court, and there by no person, but such as they called Spiritual persons, or Clergy-men, and this Ecclesiastical Court is gone. But they are now recoverable by all sorts of men alike, and in these ways. First for Predial Tythes, such as are the Tythe

of

of wood, grass, fruite, hay and the like dividable things if these be not duly and truly divided and set forth, as before is shewed they ought to be, the Parson or Vicar may sue for them in any of the Courts by an Action of Debt, wherein he shall recover treble damages upon the statute of *Ed.* 6.

But for lesser Tythes of wool Lamb, and the like, no Action will lye upon this statute, nor for mony given to the Parson in lieu of them. But for the one and the other, the party greived may at this day sue in the Chancery or in the Exchequer, or before two Justices of the Peace, who in most cases for all Tythe, Offerings, Oblations, Obventions, rates for Tythes, and all Arrears thereof, are to give relief, *Stat.* 27. *H.* 8. 20. 2. *Ed.* 6. 13. 32. *H.* 8. 7. *Cook upon Lit.* 159. 1.

And if the Tythe be once severed and set forth, and they be

be after taken away by the Owner of the land or a ſtranger: in this caſe the Parſon may have an Action of Treſpaſs againſt him *Broo. Diſmes* 6. *Brownl.* 2. *Part* 30.

If one preſcribe to pay money in ſatisfaction of Tythes, he muſt give in Evidence that he himſelfe being Parſon retained the money *Hob.* 697.

And the Farmor of a Rectory he may ſue upon the ſtatute for not ſetting out Tythes. *More*, 192. *Caſe.*

A Surmiſe was that the Parſon had twenty acres of Paſture and a Cloſe of wood in liew of Tythes, and the proof was only for the Paſture, and yet held good. *More*, *Caſe* 1284.

So where the ſurmiſe is that four ſhillings had been paid in ſatisfaction and the proof was of four ſhillings ſix pence, and held good enough. *More*, *Caſe.* 1284.

CHAP.

CHAP. IX.

In what Caſe, and how a perſon or place may be quit and diſcharged of Tythes: And what ſhall be a good diſcharge or not for the Matter or Mannor of payment of Tythes.

SPiritual perſons were ſome of them formerly diſcharged of Tythe by their Order, but there are no ſuch diſcharges now; but a diſcharge of Tythes may be at this day by the cuſtom of a Country, or by a preſcription, or by a Compoſition, which at firſt was made by and between the Parſon, Patron, and Ordinary, and another, or by an alteration of the place out of which the Tythe doth come, or by an act of Parliament, and by a unity of poſſeſſion, *Cook* 1 *Part* 33 & 3 *Ed.* 6.

13. 32 *H.*8.7. *Cook* 44. Or by Priviledge, as certain Religious Orders, Templars, and others, of which there are none with us. And therefore no ſuch diſcharge can be amongſt us at this day, *Brownlow's 2 Part* 33. Or they may be ſuſpended for a certain time, and revived again. Of all which ſee examples in the caſes that follow.

A man may be diſcharged of payment of Tythe by a cuſtom of preſcription. Wherein theſe things are to be known.

By cuſtom or Preſcription: And what is good or not.

1. Cuſtom and preſcription do differ but little; cuſtom goes to a place or Country, and preſcription to a Perſon.

2. A cuſtom applyed to a Country to pay no Tythe, in ſome caſes, as the cuſtom for the wild, being forty Pariſhes in *Suſſex*, to pay no Tythe, is good. But generally ſuch a cuſtom is not good, and a preſcription

preſcription to pay no Tythe, nor any thing in lieu of it, is not good, nor will it diſcharge, though nothing can be proved to be paid within the time of memory. *D & St.* 171. 167. *Broo. Preſcript.* 92. *Cook.* 244. And yet one may ſhew a diſcharge of his Land another way, which will amount to the payment of no Tythe, nor nothing for it.

3. But any man may preſcribe *de modo decimandi*, i.e. to pay money, or other things in lieu of the Tythe in kind for a Mannor, Farm, or piece of Land, and if he can prove this time out of mind, this will diſcharge him *Cook.* 1 Rol. 641. And therefore a Preſcription to pay four pence or any other ſum of money for all his Tythe whatſoever, or all his Tythe Hay, or all his Tythe Corn in ſuch a Farm, or ſuch a Cloſe, is good. If one preſcribe that he is to put

the Corn of the ground in Hillocks or Cocks, &c. And that for this the Parſon is to have no Tythe Corn every ſecond year, or is to have no Tythe in ſome part of the ground, this is good. So if he preſcribe to pay the tenth fleece of wool, and for this to be diſcharged of the Tythe of the locks, this is a good Preſcription. 36. 37. *Eliz. Co. B. Jeſops Caſe.* But if one preſcribe, that becauſe he doth pay Tythe Hay, he is to pay no Tythe Corn; or becauſe he he payeth Tythe Corn, he is to pay no Tythe of his Cattle, this is not good. *Smiths Caſe. Hill.* 8. *Jac. B.R.* So if one preſcribe to be diſcharged of Tythes in one place, becauſe he payeth Tythes in another place; or to be diſcharged of Tythes of Lambs, becauſe he payeth Tythe of wool; or to be diſcharged of Tythes of other Cattel, becauſe he payeth twelve pence for a Cow, theſe

are

are not good preſcriptions. *Fleetwoods Caſe. 7 Jac. Co. B.* If a Cuſtom be alledged, that That the Parſon ſhall have but the tenth ſheaf of wheat for the Tythe of all manner of Corn and Grain, this is not a good Cuſtom. *Mic. 11. Jac. Co B. Jacks Caſe. 38. Eliz. Co. B, Adjudg.* So a cuſtom was alledged, That the Owners of a Farm had been uſed time out of mind, to take back thirty ſheafts of their Tythe Corn again after it was ſet out, to their own uſe; this was diſallowed.

4. A Preſcription to pay a ſhoulder of Buck or Doe when they are killed, in lieu of all the Tythe of a Park, is good, and will diſcharge the Park. 3. 7. & 37. *Eliz. Shipdams Caſe.* And although after the Park be diſcharged, and converted into Tillage or Hop-ground, yet it is held that the Parſon ſhall not have Tythe in kind, but the diſcharg ſhall con-

tinue, *M.* 5. *Jac. Co. B. Ad judg. M.* 11. *Jac. Co. B. Compers Case.*

Sect. 2. 5. A preſcription to pay a leſs part then the tenth Part, may be good and binding.

6. A Preſcription that if one have leſs then ſeven Lambs, he ſhall pay but pence a peice for them, is good. *Curia.* 7. *Jac. B. R. Patches Caſe.*

7. A Preſcription to be diſcharged of Tythes for every houſe in *London*, in lieu of twelve pence of the Rent made of the houſe, is good. *Cook* 11. 16. And ſo for any other thing that may be conceived to have a reaſonable Commencement, the Law will admit it.

8. One may preſcribe, That he, and all thoſe whoſe Eſtates he hath in the Mannor of *Dale* in *Dale*, time out of mind, have paid to the Parſon of *Dale* for the time being, a certain Penſion yearly for the maintenance of Divine Service there

there, in ſatisfaction of all the Tythes ariſing and growing within the Mannor of *Dale*; and preſcribes further, That he, and all thoſe whoſe Eſtates he hath in the ſaid Mannor, time out of mind, have been uſed in regard of the ſaid Penſion ſo paid to the Parſon, to have all the Tythes hapning and ariſing within the ſaid Mannos, or any part of it; *viz.* of all the Lands held of the ſaid Mannor, or any parcel of it; this is a good Preſcription, and may have a reaſonable beginning thus, That the Lord was ſeized of all the Mannor before the Tenancies derived out of it; and by ſome good Compoſition or grant between him, the Parſon, Patron and Ordinary, it was granted to him in lieu of this money, which muſt be intended, becauſe time out of mind; it hath been ſo paid. *Cook.* 7. 45. But without ſome ſpecial matter alledged, a Lord cannot

prescribe after this manner in him and all those, &c. generally.

9. Also a Parishioner may be discharged of Tythe by an agreement with the Parson; if he be a spiritual person, he may discharge it for his life; if he be an Impropriator, he may discharge it for all the time he hath the Parsonage. But a spiritual person cannot by his agreement bind his Successors. And payment of a sum of money in lieu and recompence of Tythe for sixty yeares, or thereabouts, is held a reasonable time to make a Prescription. *Cook upon Lit.* 14. *Crompt. Jur.* 77. *Dyer* 7, 9.

Sect. 3. *By an alteration of the place or thing out of which the Tythe doth come, or by other alteration.*

Tythe may be discharged by the alteration of the place or thing out of which the Tythe is to come; for the opening of which take these things.

1. If one prescribe to be discharged of payment of Tythe hay for such a ground, or the Tythe Corn of such a ground, and

and the Owner change the nature of the ground; the paſture into tillage, or tillage into paſture; in theſe caſes the Preſcription is gone. *Hill.* 7. *Jac. C. R. Shipton's Caſe*, *Adjudge.* But if the Preſcriptions be general, four pence for all manner of Tythe ariſing in ſuch a Ground, there the alteration will not hurt the Preſcription. So it is if one preſcribe to pay the Shoulder of every Buck and Deer of his Park for all manner of Tythe of the Park, and the Park be after diſparked, and ſown to Corn, it is ſayd the Preſcription is gone, and that Tythes muſt not be paid in kind, but if any part of it remain a Park, and the reſt only be ſowed, it is otherwiſe, 36, 37 *Eliz. Shipdams Park in Norfolk.* So it is ſaid, if all the Park be ſuffered to fall down which is a diſparking in Law, of the Park, yet the ſame doth not deſtroy the manner of Tything, for the ſame may be a Park again: But

whether gone or not.

ſome doubt of this. And a difference hath been taken, where a Preſcription runs to ſo many acres of Land certain, for in that caſe the *Modus* continueth, and where to the Park in the name of a Park, in which caſe it is gone if it be diſparked, *Paſch.* 19 *Jac. Co. B. Pools Caſe*, and *in Brownl. Rep.* 1 *Part. Paſch.* 20 *Jac. Co. B.* 35. It is doubted whether the Tythe be not gone in both caſes; and held, That if a man can preſcribe for ſo many Bucks, that this Park is diſcharged, and if it be diſparked, that the Preſcription is not gone.

2. And if two Fulling Miſls be under one roof, and a rate Tythe be payd for the Mills, (which is a kind of preſcription) and after the Mills are altered, and made into one Corn Mills, in this caſe the Preſcription is gone, and Tythe ſhall not be payd in kind. So if there be but one pair of Stones in the Mill, and after there is another

pair

pair of Stones put in the Mill; now Tythe must be payd in kind, and the manner of Tything is gone. *Brownl. Rep.* 1 *Part. Pasch.* 10 *Jac.* 31.

3. If I have the Tythe of the Hay of a close, or all manner of Tythe there, and the Owner of the ground turn it from Meadow to tillage, or to Hops, or the like, or turn it from tillage to pasture, the Tythe is not gone but shall be payd in kind as it falleth. So if one turn Wood ground into Meadow or Tillage, the Owner shall pay Tythe in kind; and Tythes is not lost hereby; onely if it fall out to be within the case of barren Heath, he shall pay for seven years no more then was payd formerly for it. See it before, *Pasch.* 18 *Jac. B.R. Court in Baxters Case.*

4. If one be to pay a sum of Money for the Tythe of a piece of Ground; and the Ground be after turned to Houses and Gardens, in this case the man-

ner

ner of tything doth continue, *Cooke* 11. 16.

5. If one turn his Paſture into a Coniger, and make coney-burrows in it, the Tythe will not be gone. But I conceive, it doth continue as it did for the manner of Tything as before, and no new manner of tything. See before Tythe of Coneys, *M.* 13 *Car. B. R.*

6. If the Vicar keep the Glebe in his own hands, it is ſayd, that ſo long he is to pay no tithe to the Parſon impropriate. But if he leaſe it to another, then the Leſſee muſt pay Tythe to him; and if he ſow the Land, that he muſt pay Tythe as other men, *Brownl. Rep.* 69.

7. If a Parſon impropriate keep his Glebe in his own hands, he cannot pay Tythe to himſelf. But if he ſell or let it to another, he ſhall pay Tythe as other men. And if a Parſon purchaſe Land within his Rectory, no Tythe is to be payd for this whiles it is in his own hands. But if he af-

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ter Leaſe the Parſonage, his Leſſee ſhall have Tythe of this new purchaſed Land. And if he make a Feoffment or Leaſe of the purchaſed Land, his Feoffee or Leſſee muſt pay Tythe again, *Cook upon Litt.* 139. 11. 14. *Broo. Diſmes* 17. *Dyer* 43.

And if one purchaſe a Parſonage and Mannor in the Pariſh diſcharged of Tythes, and then Leaſe part of the Demeſnes of the Mannor, it is ſayd the Leſſor ſhall have Tythe of this part. *Broo. Diſmes* 17. *Sed quære* of this.

8. If Land lye in a Forreſt in any Pariſh, and is Tythe-free, and the Forreſt be diſforeſted, now it ſhall pay Tythe in kind. *Cromp. Jur.* 52. *Lord Ch. Bacon at Sarum Aſſizes.*

The alteration of payment (as if inſtead of the Money to be payd, another ſum, or Tythes in kind have been payd for twenty years paſt) will not deſtroy the Preſcription. *Cook upon Lit.* 14. *Dyer* 7.

9. That

9. That where Lands are once discharged of Tythes by a *Modus Decemandi*, it is a *Quare* if they shall revive again upon the Failer of the *Modus*. As where there is a *Modus Decimandi*, for a Park, two shillings a yeare, and a Shoulder of every third Deer killed in the Park, and the Park is disparked. See for this, *Hob.* 39.

10. That a Custome to pay Tythes truly, without view of the Parson, is not good, for no man may be his own Judge or Divider, *Hob.* 107.

11. That a Custome cannot be discharged by a verbal agreement for Money, *Hob.* 176.

12. An Abbot discharged of Tythes, *Quamdiu in manibus propriis*, makes a Gift in tail, and the Donee and the Issue shall pay Tythes, *Hob.* 248. So though the Tenant in tail suffer a Recovery, yet he shall pay Tythes. But if the Land return to the Abbot, it is discharged again, *Hob.* 248.

Lands

Lands may be discharged from payment of Tythes by annuity of possession of the Parsonage, and Lands which did pay Tythes by an appropriation or otherwise, in the hands of Religious and Ecclesiastical persons (as they were called.) So that now at this day by the Statute of 31 *H.* 8. 13. Such an unity in the sayd Religious Houses and Persons, will be a discharge to all Patentees from the payment of Tythes of Lands that came to the Crown by the same Statute. But then this unity in the sayd Religious persons must have been *Justa*, obtained by Right; for if either the Parsonage, Vicarage, Tythes, or Lands, had come or been united to their Houses by Disseisings, or other tortious or unlawful acts, this had not been a good discharge within the Statute. 2. It must have been *Æqualis*, there must have been a Fee-simple both in the Lands out of which the Tythes were to be payd, and in the

the Parſonage or Vicarage in them; for if the Abbots, Priors, or other Religious perſons had held but by Leaſe, that had not been ſuch a unity as the Statute intended. 3. It muſt have been *Libera*, free from the payment of any Tythe; for if the Farmers or Tenants at will, or for years, had payd Tythes, that had not been a ſufficient unity to have diſcharged the Land. 4. And laſtly, It muſt have been *Perpetua*, time out of mind. And then for the infinite impoſſibility, and impoſſible infiniteneſs that ſuch immunities and diſcharges, that ſuch Religious perſons and houſes had before time of memory could not be known; ſuch a unity had been a good diſcharge of the Lands in their own hands. And if the Monaſtry were built in the time of memory, or appropriated within the time of memory, and Tythe were payd before this, it will not ſerve turn to diſcharge it. And at this day ſuch an u-

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hity is a good diſcharge for the Kings Patentees, with the Statute of 31 *H.* 8. But ſuch Lands as came to the Crown by the Statute of 27 *H.* 8. of Diſſolution, muſt at this day pay Tythes, although the Lands in the hands of ſuch Religious perſons or houſes were diſcharged from the payment of Tythes, for the priviledges being perſonal priviledges, were extinguiſhed by the Statute of Diſſolution, and there are no words in that Statute to ſave them. *Stat.* 31 *H.* 8. 13. 7 *H.* 4. 6. 32 *H.* 8. 7. *Cook* 11. 14. 2. 42. *Dyer* 278. 349. 277.

And for a further light herein, take theſe Caſes following. In a Prohibition, the queſtion being for the Tythes of an aftermoth; the Plaintiff preſcribed to make the firſt crop into little Cocks in leiw of all Tythes of the firſt and ſecond Crop: and it was held not good. But if he had preſcribed to make it into great Cocks, or to bring it into

into the Barn for the Parſon; this had been a good Preſcription, *More*, *Caſe* 1048.

A Parſon of a Church in *London* ſued a Pariſhioner for Tythes of certain Stables there, and libelled, That of common right and by Preſcription time out of mind the Parſons there uſed to have a *Modus Decimandi* for the Houſes, Stables, and Buildings, that is to ſay, after the tenth part of the yearly rent or value of the ſame; and it was held not good, *Hob.* 11.

Tythes are not diſcharged in right (though in payment) by unity of poſſeſſion, *Hob.* 44. 297.

A Cuſtome was alleadged by the Parſon, That the occupiers of the Meadow did uſe to cut the Graſs and ted it, and then to gather it to winrows, and then to put it into Graſs Cocks in equal parts without fraud, and then to ſet out every tenth Cock great or ſmall to the Parſon, in full ſatisfaction, as well of the firſt as of the latter making

ting: and it was held a good Custome, *Hob.* 250.

There are five wayes whereby the Abby-lands came to be holden discharged of Tythes, by Composition, Bull, or Canon, Order, prescription of discharge and unity of possession of Parsonage and Land time out of mind together without payment of Tythes, *Hob.* 308, 309. But the unity that doth discharge, must be (as is sayd.) it must not be pleaded as a discharge of Tythes, but as a discharge of the payment of Tythes. 2. It must be by Prescription time out of mind, without any allegation, That the Abbot or his Farmer payd Tythe, for that will destroy the Prescription, *Hob.* 296. 309. But for this see *More, Cases* 140. 151.

If one be sued for Tythes in the Spiritual Court where none are due, as for Tythes in kind of a Park disparked, for which formerly a *Modus* hath beene payd. For all the Tythes where

the

the King or Patentee hath right to two parts, *Hob.* 39. 115. Or where one ſues as Parſon, who came in by Symony, and the Pariſhioner pleads it, and the Court will not allow it, *Hob.* 163. Or where the Parſon ſues for Wood not Tythable, or where a Suit is for the ſecond Hay after one hath payd Tythe of the firſt, or the like, there the party grieved may have a Prohibition out of the Courts at *Weſtminſter* to relieve himſelf, *Hob.* 219. *More*, *Caſe* 1264.

Where the Suit is in the Spiritual Court upon a *Modus Decimandi*, if the *Modus* be denyed, a Prohibition will lye alſo in this caſe till it be tryed.

Coppy-hold Land appertaining to a Monaſtry, is not diſcharged by unity, *More*, *Caſe* 256.

Unity diſchargeth Monaſtery Lands of Tythes if they were diſcharged at the time of the Diſſolution. *More*, *Caſe* 574.

An Abbot before the Diſſolution

tion made a Leaſe for years of the Mannor and Rectory, the Leſſee made an inferiour Leaſe of pareel of the Mannor, and had Tythes of the Leſſee at the time of the Diſſolution, the terme expired, now this Land for which Tythes were ſo payd is not diſcharged as the reſidue is by the Unity, *More*, *Caſe* 699.

Unity of Inheritance without occupation together is not a perpetual diſcharge, *More*, *Caſe* 697.

A Preſcription to pay the tenth Sheaf, or the tenth Cock for all Tythes of the Land that year in which it is ſowed, but he muſt pay Tythes alſo of the Rakings, *More*, *Caſe* 433.

A Spiritual perſon may preſcribe in *Non Decimando* for him, his Tenants and Farmors, *More*, *Caſe* 493.

Tythes of one thing only cannot be in ſatisfaction of Tythes of the ſame and other things of another kind, *More*, *Caſe* 623.

The

The Lord of a Mannor may prescribe to pay six pounds in satisfaction of all the Tythe Corn within the Mannor, and may also prescribe to have the tenth Sheaf and Cock to himself, in satisfaction of his payment, *More, Case* 685.

A Copyhold of Inheritance of the Land of a Bishop may prescribe in *Non Decimando*, *More, Case* 844.

A Prescription will not lye against a Composition between the Parson and Vicar, *More, Case* 1881.

Modus Decimandi, That he hath payd ten shillings yearly to the Vicar for all Tythes of wood, may be good, but if the question be between the Parson and the Vicar, it must be decided in the Spiritual Court, *More, Case* 1267.

It is a good Custome to pay Tythe Wool at Lammas day, though it be due at Shearing, *More, Case* 1280.

To prescribe, That he hath been

been uſed to pay a penny, called Hearth penny, in ſatisfaction of Tythe for all combuſtible wood may be good, *More, Caſe* 1280.

A Cuſtome to pay a Halfe penny for the Wooll, *De ovibus venditis*, after Shearing and before *Michaelmas*, is a good Cuſtome, and the Sheep diſcharged ſhall be Weathers as well as Ews, *More, Caſe* 1283.

If a Preſcription be layd to be diſcharged of locks of Wool, it muſt be ſet forth of Wooll caſually loſt, *Idem.*

CHAP.

CHAP. X.

Of other Profits which the Parſon and Vicar doth claim.

THere are ſome other ſmall profits which Parſons and Vicars claim, as belonging to their parſonages and Vicarages, beſide Tythe, and money in lieu of Tythe, as Mortuaries, Oblations, Obventions, &c. And as to Mortuaries, theſe things are to be known. *Mortuaries.*

1. That no Mortuary is to be paid, but where it hath been uſed to be paid.

2. There ſhall be put one Mortuary paid, and no more.

3. No perſon that doth keep houſe muſt pay them.

4. No Woman that hath a Husband ſhall pay them.

5. No Children muſt pay them.

6. Where they are to be paid, they muſt be paid after this proportion; *Viz.* He that dyeth, having goods under ten Mark, ſhall pay nothing; for Goods above that value, and under thirty pounds, but three ſhillings four pence; for Goods above thirty pounds, and under forty pounds, ſix ſhillings eight pence; for Goods above forty pounds, how much ever it be, but ten ſhillings.

7. All this Account muſt be made onely out of the Goods remaining after Debts payd.

8. The Parſon of the place where the party dwells, not of the place where he dyeth, muſt have it, *Stat.* 21 *H.* 8. 6. 26 *H.* 8. 15.

9. Offerings are to be payd in the place where the party dwelleth at ſuch four Offering dayes as before the Statute of 2. & 3. *E.* 6. *Cap.* 13. within the ſpace of four years then laſt

paſt

paſt had been uſed for the payment thereof, and in default thereof at Eaſter, *Crook* 3. *Abridg. Caſe* 3159.

Offerings in *London* are a groat a Houſe.

Oblations, Obventions, and Offerings.

There is no more to be ſayd for Obventions, Oblations, and Offerings, which ſeem to be all one, but that they by the Law now in force are to be payd as formerly they have been, *Stat.* 32 *H.* 8. 7. 27 *H.* 8. 20. 2 *&* 3 *Edw.* 6. 13. *Cook* 11. 16.

FINIS.

E. J. M.